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In the Supreme Court of the United States

OCTOBER TERM, 1973

No. 73-604

DONALD C. CASS, PETITIONER

v.

UNITED STATES OF AMERICA

No. 73-5661

FRANCIS A. ADAMS, ET AL., PETITIONERS

v.

SECRETARY OF THE NAVY, ET AL.

ON WRITS OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

BRIEF FOR THE RESPONDENTS

OPINIONS BELOW

The opinion of the district court in *Cass* (*Cass* Pet. App. 1a-3a) is reported at 344 F. Supp. 550.

The opinion of the district court in *Adams* (*Adams* App. 22-24) is unreported. The court of appeals opinion in both cases (*Cass* Pet. App. 4a-8a; *Adams* App. 40-44) is reported at 483 F. 2d 220.

JURISDICTION

The judgment of the court of appeals was entered on August 1, 1973 (*Cass* App. 11). A petition for a writ of certiorari was filed in *Cass* on October 5, 1973, and in *Adams* on October 26, 1973. This Court granted both petitions on January 7, 1974 (*Cass* App. 12; *Adams* App. 45). The jurisdiction of this Court rests on 28 U.S.C. 1254(1).

QUESTION PRESENTED

Whether reserve servicemen who are involuntarily released from active military duty after continuous active service of more than four and one-half, but less than five, years are entitled to readjustment pay under 10 U.S.C. 687(a).

STATUTE INVOLVED

10 U.S.C. 687(a) provides:

> Except for members covered by subsection (b), a member of a reserve component or a member of the Army or the Air Force without component who is released from active duty involuntarily, or because he was not accepted for an additional tour of active duty for which he volunteered after he had completed a tour of active duty, and who has completed, immediately before his

release, at least five years of continuous active duty, is entitled to a readjustment payment computed by multiplying his years of active service (other than in time of war or of national emergency declared by Congress after June 28, 1962), but not more than eighteen, by two months' basic pay of the grade in which he is serving at the time of his release. However, a member who is released from active duty because his performance of duty has fallen below standards prescribed by the Secretary concerned, or because his retention on active duty is not clearly consistent with the interests of national security, is entitled to a readjustment payment computed on the basis of one-half of one month's basic pay of the grade in which the member is serving at the time of his release from active duty. A person covered by this subsection may not be paid more than two years' basic pay of the grade in which he is serving at the time of his release or $15,000, whichever amount is the lesser. For the purposes of this subsection—

(1) a period of active duty is continuous if it is not interrupted by a break in service of more than 30 days;

(2) a part of a year that is six months or more is counted as a whole year, and a part of a year that is less than six months is disregarded; and

(3) a period for which the member concerned has received readjustment pay under another provision of law may not be included.

Prior to codification in 1962 as 10 U.S.C. 687(a), the Act of July 9, 1956, 70 Stat. 517, as amended,

50 U.S.C. (1958 ed.) 1016(a), provided in pertinent part:

> A member of a reserve component who is involuntarily released from active duty after the enactment of this section and after having completed immediately prior to such release at least five years of continuous active duty, except for breaks in service of not more than thirty days, as either an officer, warrant officer, or enlisted person, is entitled to a lump-sum readjustment payment computed on the basis of one-half of one month's basic pay in the grade in which he is serving at the time of release from active duty for each year of active service ending at the close of the eighteenth year. For the purposes of computing the amount of readjustment payment (1) a part of a year that is six months or more is counted as a whole year, and a part of a year that is less than six months is disregarded, and (2) any prior period for which severance pay has been received under any other provision of law shall be excluded. * * *

STATEMENT

The basic facts in these cases are undisputed. They are as follows:

Cass. As a member of the Army Reserves, Cass served on active Army duty from July 16, 1966, to April 26, 1971 (*Cass* App. 6). He had attained the rank of captain when he was honorably but involuntarily released from active duty after continuous service of 4 years, 9 months, and 13 days (*Cass* App. 6-7). After his request for readjustment pay of

$10,638 was denied by the Army, Cass commenced this action against the United States in the United States District Court for the District of Montana. For purposes of establishing jurisdiction under 28 U.S.C. 1346(a), Cass waived his claim to readjustment pay in excess of $10,000 (*Cass* App. 7).

The district court awarded Cass judgment in that amount. The court held that by virtue of the rounding provision in Section 687(a)(2), Cass qualified for readjustment pay even though he did not serve a full five years of continuous active duty (*Cass* Pet. App. 1a-3a).

Adams, Steneman, and *Youngquist.* Like Army Captain Cass, these three Marine Corps Reserve captains were notified that they would be honorably released from active duty after more than four and one-half, but less than five, years' service (*Adams* App. 25, 27, 29). Each had requested to remain on active duty beyond the expiration of his service commitment, but these requests were denied by the Commandant of the Marine Corps (*Adams* App. 25, 27, 29).

Prior to their release from active duty, Adams, Steneman, and Youngquist brought separate but similar actions in the United States District Court for the Central District of California against the Secretary of the Navy and the Commandant of the Marine Corps (*Adams* App. 10, 14, 18). Asserting jurisdiction under 28 U.S.C. 1331 and 1361, *inter alia,* the three officers sought a decree ordering the defendants (1) to modify the officers' military release

orders so as to authorize readjustment pay, and (2) to pay them readjustment pay. Upon the motions of the three officers, the district court preliminarily enjoined their involuntary release from active duty without readjustment pay, but subsequently vacated these injunctions as moot after the officers had been retained on active duty after completion of five full years of service (See *Adams* App. 23, 41). The district court then held that the three officers were entitled to readjustment pay based upon their service of more than four and one-half years, without including their additional service pursuant to the injunctions (*Adams* App. 23). Judgment was entered for the officers in the agreed amounts of $9,273 for Adams and Steneman and $10,065 for Youngquist (*Adams* App. 26, 28, 30).

The Court of Appeals Decision. On the government's appeals, the Court of Appeals for the Ninth Circuit reversed the decisions of both district courts (*Cass* Pet. App. 4a-8a; *Adams* App. 40-44). The appellate court held that the rounding provision of 10 U.S.C. 687(a) applies only for the purpose of computing the amount of readjustment pay, not for determining whether the minimum five-year period of service necessary for eligibility has been attained.[1]

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[1] The court of appeals also rejected the contention of Adams, Steneman, and Youngquist that they qualified for readjustment pay by virtue of their service pursuant to the preliminary injunctions (*Adams* App. 43-44). This aspect of the decision below is not challenged in this Court.

ARGUMENT

A SERVICEMAN MUST COMPLETE AT LEAST FIVE FULL YEARS OF CONTINUOUS ACTIVE SERVICE TO BE ELIGIBLE FOR READJUSTMENT PAY UNDER 10 U.S.C. 687(a).

A. Introduction and Summary.

The single issue presented in these cases is whether the minimum period of active duty necessary for readjustment pay under 10 U.S.C. 687(a) is five years or four and one-half years. In its present form, Section 687(a) provides:

> * * * a member of a reserve component * * * who has completed, immediately before his release, at least five years of continuous active duty, is entitled to a readjustment payment computed by multiplying his years of active service * * * by two months' basic pay * * * For the purposes of this subsection—
>
> * * * *
>
> (2) a part of a year that is six months or more is counted as a whole year, and a part of a year that is less than six months is disregarded * * *.

The government contends that the "rounding" provision in Subsection 2—under which service of six months or more is treated as service for a whole year and service of less than six months is disregarded—applies only in calculating the amount of readjustment pay, which is based upon the number of years of active service. It does not, however, control the basic determination whether the reservist is qualified

for any readjustment pay, to which he is not entitled unless he has completed "at least five years of continuous active duty." In other words, the government's position is that a reservist is not entitled to readjustment pay unless he has served at least five years on active duty but that, if he has so served, then the rounding provision comes into play in calculating the amount of his readjustment pay. For example, a reservist who served four years and eight months would not receive any readjustment pay; a reservist who served 13 years and four months would receive readjustment pay based upon 13 years of service; and a reservist who served 13 years and eight months would have his readjustment pay based upon 14 years of service.

The petitioners, on the other hand, interpret the rounding provision as covering entitlement to readjustment pay as well as its amount. In the hypothetical above, they argue that a reservist who served four years and eight months on active duty is entitled to readjustment pay based upon five years of service. In other words, they contend that when Congress specified that "at least five years of continuous active duty" was required before a reservist was entitled to readjustment pay, it actually meant only "at least four and one-half years."

Our submission is that the language of the statute shows that Congress intended the rounding provision to apply only in determining the amount of benefits but not eligibility for benefits, and that any possible doubt on that question is dispelled by the legislative

history of the statute. As originally enacted in 1956, the statute expressly provided that the rounding provision was applicable only "[f]or the purposes of computing the amount of readjustment payment," and the legislative history of that rounding provision shows that it was intended to cover only the calculation of the amount of pay. The present controversy arises because in the 1962 codification of the readjustment pay statute that phrase was changed to "[f]or the purposes of this subsection * * *." Both legislative committee reports on the codification state that no substantive change was intended, and the absence of congressional hearings or debates on the codification bill further confirms that, in making this change, Congress did not intend to reduce the eligibility criterion from five to four and one-half years' service. Although petitioners contend that the statute is so clear on its face that resort to legislative history is improper, we submit that there is sufficient ambiguity in the language that it is necessary to consider legislative history; in any event, the canon of statutory construction upon which petitioners rely cannot properly be applied in this case.

B. The "rounding" provision of Section 687(a) applies only in calculating the amount of readjustment pay, but not in determining whether a reservist is eligible for such pay.

The provision for readjustment pay for reservists in Section 687(a) contains two elements: (1) the standard for determining whether a reservist is eligible for such pay—that he must have completed "at

least five years of continuous active duty," and (2) a formula for calculating the amount of such pay, namely, "by multiplying his years of active service * * * by two months' basic pay." In the qualification portion of the statute, Congress itself fixed at five the minimum years of active service required before a reservist can receive any readjustment pay. In the computation section, however, Congress made the amount of such pay depend upon the number of years of actual service which, under the qualification section, necessarily had to be at least five.

In the light of this statutory plan, we submit that the rounding provision—under which service of more than six months is treated as service for a whole year, and service of less than six months is disregarded—applies only to computing the amount of benefits but not to determining eligibility therefor. Since Congress itself fixed the number of years of active service required before readjustment pay is available, the only reason for a rounding provision was to avoid ambiguity with respect to the basis upon which benefits were to be calculated for eligible reservists, *i.e.*, the number of a reservist's "years of active service." It is hardly likely that Congress, after specifying that "at least five years of continuous active duty" are required before a reservist can obtain readjustment pay, intended by the rounding provision to permit that requirement to be satisfied by four and one-half years of such duty. If Congress had intended the latter, it would have used that period instead of the five years it expressly provided.

Our interpretation of the statute is further confirmed by the fact that there are a number of other military pay provisions containing rounding provisions in which Congress, when it intended rounding to be used for determining eligibility, expressly so provided. The rounding provisions in the following statutes are limited to calculating the amount of payment, not determining eligibility: 10 U.S.C. 1167 (regular warrant officer severance pay); 10 U.S.C. 1405 (retired pay); 10 U.S.C. 3303, 3786, and 3796 (Army severance pay); 10 U.S.C. 6151, 6328, and 6404 (Navy and Marine Corps retired pay); 10 U.S.C. 8303, 8786, and 8796 (Air Force severance pay); 14 U.S.C. 286 (Coast Guard severance pay); 42 U.S.C. 212 (Public Health Service retired pay.). The only exception to this uniform scheme, so far as our research discloses, is 10 U.S.C. 6330,[2] dealing with transfers to the Navy and Marine Corps Fleet Reserve.

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[2] The pertinent part of 10 U.S.C. 6330 provides:

> (b) An enlisted member of the Regular Navy or the Naval Reserve who has completed 20 or more years of active service in the armed forces may, at his request, be transferred to the Fleet Reserve. An enlisted member of the Regular Marine Corps or the Marine Corps Reserve who has completed 20 or more years of active service in the armed forces may, at his request, be transferred to the Fleet Marine Corps Reserve.
>
> (c) Each member who is transferred to the Fleet Reserve or the Fleet Marine Corps Reserve under this section is entitled when not on active duty, to retainer pay at the rate of 2½ percent of the basic pay that he

The language of that provision, in contrast to the language of the pay provisions cited above and the readjustment pay statute, reflects a deliberate choice to apply rounding in determining both eligibility and amount. Moreover, in contrast to the adjustment pay statute (see discussion in Point C, *infra*), there is no antecedent statute or legislative history indicating that Congress intended the rounding provision of 10 U.S.C. 6330 to apply only to computation of the amount of pay.

The conclusion that 10 U.S.C. 687(a) does not apply in determining eligibility for readjustment pay is further supported by the administrative interpretation of the agencies which administer the provision. All of the military services have uniformly applied the rounding provision only in computing payment, not in establishing the five years' service necessary for eligibility. See Department of Defense, Pay and Allowances Entitlements Manual, § 40411; Army Regulation 37-125, ¶ 1-40; Air Force Manual 177-105, ¶ 3-13(a); Secretary of the Navy Instruction 1900.7C, ¶ 3; Marine Corps Order 1900.1H, ¶ 7; Coast Guard Comptroller's Manual, ¶ 2B01157(A) and (E).[3] The administrative construction of 10

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received at the time of transfer multiplied by the number of years of active service in the armed forces * * *

(d) For the purposes of subsections (b) and (c) a part of a year that is six months or more is counted as a whole year and a part of a year that is less than six months is disregarded. * * *

[3] These regulations are set forth in the Appendix to this brief. The DOD Pay and Allowances Entitlements Manual

U.S.C. 687(a) is entitled to great deference, *Udall* v. *Tallman*, 380 U.S. 1, 16, and "should be followed unless there are compelling indications that it is wrong," *Red Lion Broadcasting Co.* v. *Federal Communications Commission*, 395 U.S. 367, 381. Here, the administrative construction is consistent with both the language of the statute and, as we now show, its legislative history.[4]

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and prior Army and Air Force regulations are also reproduced in the *Cass* Court of Appeals Record, pp. 40-48.

[4] Petitioners Adams, Steneman, and Youngquist contend that the rounding provision of Section 687(a)(2) should apply for determining both eligibility and amount because, they assert, Section 687(a)(3) excludes prior service for both purposes (Adams Brief, 13-16). The statute provides:

> For the purposes of this subsection—
>
> * * * *
>
> (3) a period for which the member concerned has received readjustment pay under another provision of law may not be included.

Before codification, the Act of June 28, 1962, 76 Stat. 120, expressly limited the applicability of this provision, as well as the rounding provision, "[f]or the purposes of computing the amount of the readjustment payment * * *." Similarly, the DOD Pay Manual § 40414(b) now excludes such prior service only for computing the amount of pay, not for determining eligibility. The question whether such prior service should be excluded for eligibility purposes would apparently arise only in the extraordinary case of a reservist who was involuntarily released and paid readjustment pay under the pre-1962 readjustment pay statute, but then was returned to active duty within thirty days and thereafter was involuntarily released again. Thus, the fact that Section 687(a)(3) is applied by the military only for computation, not eligibility, purposes supports the position that the rounding provision of Section 687(a)(2) should also apply only for computation purposes.

C. The legislative history of the Reservists' Readjustment Pay Act shows that Congress intended the rounding provision to apply only in calculating the amount and not in determining eligibility for such pay.

1. Readjustment pay was originally established by the Act of July 9, 1956, 70 Stat. 517 (*supra* at p. 4). The statute's primary purpose was to aid involuntarily released reservists in readjusting to civilian life.[5] In language identical to the present provi-

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[5] This purpose was explained in H. Rep. No. 1960, 84th Cong., 2nd Sess. 2:

> As a result of the Korean hostilities and the related international tension of the last few years, a large number of reservists with wartime experience have been retained on active duty. These reservists have served faithfully and efficiently and, in many cases, have served 10 or more years. Many are approaching the age at which their usefulness to the military forces is less than that of younger reservists who are needed for current and future military service. These older reservists have been away from civilian life for an extended period and, in some cases, have been called away from civilian occupations on two occasions, during World War II and the Korean incident.
>
> The committee believes that they should be given an equitable payment upon involuntary release from active military duty to help them again readjust to civilian life.

A second purpose of the Act was:

> * * * to induce Reserve officers, by providing some measure of economic security, to remain voluntarily in the active service and thereby to reduce expensive personnel turnover and to increase the effectiveness of the armed services through the retention of competent and experienced officers.

S. Rep. No. 2288, 84th Cong., 2nd Sess. 2.

sion, the 1956 Act specified that "at least five years of continuous active duty" were necessary to establish eligibility for readjustment pay. Under that statute, as under the present one, the amount of the readjustment pay was also based upon the number of years of active duty. There was no ambiguity created by the original language relating to rounding off, however, because the 1956 Act provided, "*For the purposes of computing the amount of readjustment payment* (1) a part of a year that is six months or more is counted as a whole year * * *." 70 Stat. 517 (Emphasis added).[4]

Indeed, the italicized phrase was added at the suggestion of the Comptroller General to preclude any possible confusion over whether a full five years' service was required for eligibility. As passed by the House, the rounding provision in the 1956 bill was similar to the present one: "*For the purposes of this subsection*, a part of a year that is 6 months or more is counted as a whole year, and a part of a year that is less than 6 months is disregarded." H.R. 9952, 84th Cong., 2nd Sess., reprinted at 102 Cong. Rec.

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[4] The *amicus* argues that because the present statute provides, "For the *purposes* of this subsection * * *" (emphasis added), the rounding provision should be applied for determining both eligibility and amount (O'Meara Brief, 20). The plural "purposes," in the present statute, however, appears merely to have been carried forward from the 1956 provision, which expressly limited the use of rounding to calculating the amount of pay. Therefore, the use of the word "purposes" in the present statute does not support the contention that the rounding provision applies for eligibility purposes.

10120 (Emphasis added). Representative Brooks, the bill's sponsor, explained to the House that this rounding provision was intended to apply only for the purpose of computing the amount of readjustment pay, not of determining eligibility (102 Cong. Rec. 10118-10119):

> Rep. Brooks: At this time I would like to explain the provisions of the bill. The readjustment payment authorized by this bill would be computed on the basis of one-half of 1 month's basic pay in the grade the reservist is serving at the time of release from active duty, for each year of active service up to and including the 18th year. A part of a year, that is 6 months or more, will be counted as a whole year, and a part of a year that is less than 6 months would be disregarded. * * *
>
> Under the provisions of the bill, a reservist must have served 5 years of continuous active duty before he could qualify. * * *
>
> Rep. Gross: The minimum, then, is 5 years; is that correct?
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> Rep. Brooks: That is correct. The reason for the 5 years, of course, is that a 3-year enlistment would require a reenlistment, or, if you put it this way, a man who is in for 4 years will have to reenlist for an extended period. After he completes the first enlistment I think he intends to stay in the service and this encourages him to stay in the service as long as the service needs him.

The Senate amended the rounding provision to specify that it applied only "[f]or the purposes of

computing the amount of readjustment payment * * *." 102 Cong. Rec. 11333-11334. This clarification had been suggested by the Comptroller General in a letter to the Chairman of the Senate Committee on Armed Services, which stated:

> Although the language of subsection (a) of the bill seems to indicate that a minimum of 5 years' continuous active duty as an officer or warrant officer is necessary to qualify for a readjustment payment, the last sentence of that subsection appears to reduce the minimum qualifying service to 4 years and 6 months. Presumably the provision authorizing the counting of 6 months or more as a whole year was intended to apply only for the purpose of computing the amount of a lump-sum payment and not the quantum of qualifying service. If so, the language should be clarified, perhaps somewhat as follows:
>
> > "For the purpose of computing the amount of the readjustment payment a fractional part of a year amounting to 6 months [or 183 days] or more shall be counted as a whole year and a shorter period shall be disregarded."

S. Rep. No. 2288, 84th Cong., 2nd Sess. 11. The House then concurred in the bill as amended by the Senate. 102 Cong. Rec. 11503-11504.

Thus, the original 1956 statute unambiguously required a full five years of active service to establish eligibility for readjustment pay.

Although the readjustment pay provision was amended in 1958 (72 Stat. 1266) and 1959 (73 Stat.

596), the eligibility criterion ("at least five years") and the rounding provision continued unchanged until 1962. In that year Congress enacted two bills pertaining to readjustment pay. First, in the Act of June 28, 1962, the amount of the readjustment pay was increased. 76 Stat. 120. This Act continued in force without substantial change the rounding provision providing that six months would be rounded to the next full year only "[f]or the purposes of computing the amount of the readjustment payment" (76 Stat. 120), not for determining eligibility.

Less than three months later, Congress amended Title 10 of the United States Code to codify recent military laws. 76 Stat. 506. As part of that codification, the readjustment pay provision, 50 U.S.C. 1016(a) (1958 ed.) as amended, was repealed and reenacted as 10 U.S.C. 687(a). 76 Stat. 507, 526. It was this Act which changed the language of the rounding provision to its present form: "For the purposes of this subsection * * * a part of a year that is six months or more is counted as a whole year * * *." 76 Stat. 507.

The legislative reports accompanying the bill state that it was intended to make no substantive changes.[7] Thus, the Senate report states:

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[7] Significantly, the 1962 codification bill was assigned to the Senate and House Judiciary Committees. The bill which Congress enacted less than three months earlier to make substantive changes in the readjustment pay provision had been reported by the Senate and House Armed Services Committees. See S. Rep. No. 1096, 87th Cong., 1st Sess.; H. Rep. No. 1007, 87th Cong., 1st Sess.

> This bill, as amended, is not intended to make any substantive change in existing law. Its purpose is to bring up to date title 10 of the United States Code, by incorporating the provisions of a number of public laws that were passed while the bill to enact title 10 into law was still pending in the Congress, and to transfer to title 10, provisions now in other parts of the code.
>
> * * * *
>
> Some changes in style and form have been made to conform the provisions to the style and form of title 10 as it now exists, but these changes do not affect the substance of any of the laws dealt with.

S. Rep. No. 1876, 87th Cong., 2nd Sess. 6. Accord, H. Rep. No. 1401, 87th Cong., 2nd Sess. 1. Moreover, while these legislative reports purport to list all changes made in the statutory language, there is no mention at all of the deletion of the phrase "computing the amount of readjustment payment." [*]

A reduction in the period of active duty required to qualify for readjustment pay from five to four and one-half years would have been a significant "change in existing law."

Relying upon *Schmid* v. *United States*, 436 F. 2d 987, 990-991 (Ct. Cls.), certiorari denied, 404 U.S. 951, petitioner Cass contends that in the 1962 Act, Congress intentionally reduced the five-year eligibility criterion to four and one-half years by restoring

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[*] Paradoxically, the reports state, "The words 'lump sum' and 'For the purposes of' are omitted as surplusage." S. Rep. No. 1876, *supra* at p. 7; H. Rep. No. 1401, *supra* at p. A1. In fact, however, "For the purposes of" was not omitted.

the original rounding provision from the 1956 readjustment pay bill passed by the House (Cass Brief 18-19). This argument fails for three reasons. First, as shown above at p. 19, both legislative reports accompanying the 1962 Act indicate that no substantive change was intended. Second, as noted at pp. 16-17 *supra*, the 1956 House bill itself was not intended to permit readjustment pay after only four and one-half years of service, and the Comptroller General suggested the amended rounding provision merely to clarify, not change, the five-year requirement. Finally, the 1962 codification was enacted without debate in either the House or the Senate. There were no legislative hearings, or even inquiries, as to whether the eligibility requirement should be reduced. Yet to apply the rounding provision for eligibility purposes would create readjustment pay entitlements for a substantial number of previously ineligible servicemen.[9] As Judge Nichols aptly stated in his dissenting opinion in *Schmid* v. *United States*, *supra*, 436 F. 2d at 992:

> That the change was inadvertent is strongly supported by the reports * * *. They set forth the statutory sources of § 687, purport to show each change of language, and to explain in each instance the lack of any substantive change. Yet

[9] At the time of filing of the government's petition for a writ of certiorari in *Schmid* v. *United States*, *supra*, we were informed by the Services that they estimated that reducing the readjustment pay eligibility requirement to four and a half years would increase the Government's potential liability by more than $12,000,000.

> the reduction of the qualifying period from five to four years six months is nowhere mentioned. I believe that the Congress, had it consciously considered reducing the qualifying period as alleged, would have held hearings and received reports and testimony. This would have been a matter of importance to the GAO, which commented on the 1956 legislation, as well as to executive agencies, and to veteran's organizations. Apparently nothing of the kind occurred.

2. Petitioners attempt to avoid the force of this legislative history by arguing that the statute is clear on its face, and that resort to legislative history is therefore inappropriate. As the previous discussion indicates (*supra*, pp. 9-10), however, there is sufficient uncertainty about the meaning of the statute—whether the phrase "For the purpose of this subsection" in the rounding provision covers only the calculation of the amount of benefits, but not the determination of eligibility therefor—to make it appropriate to consider the intention of Congress as reflected in the history of the legislation. Indeed, the need for considering such history is underlined by the disagreement between the court of appeals in this case, which found that statute "clear on its face" in requiring five years' service for eligibility (*Adams* App. 43), and the Court of Claims in *Schmid* v. *United States*, *supra*, 436 F. 2d at 989, which found the statute "clear and unambiguous on its face" in requiring only four and one-half years.

In any event, as stated in *United States* v. *American Trucking Assns.*, 310 U.S. 534, 543-544 (foot-

notes omitted), "When aid to construction of the meaning of words, as used in the statute, is available, there certainly can be no 'rule of law' which forbids its use, however clear the words may appear on 'superficial examination.'" Similarly, in *Lynch* v. *Overholser*, 369 U.S. 705, 710, this Court emphasized:

> The decisions of this Court have repeatedly warned against the dangers of an approach to statutory construction which confines itself to the bare words of a statute * * * for "literalness may strangle meaning," *Utah Junk Co.* v. *Porter*, 328 U.S. 39, 44.

The utilization of legislative history is particularly appropriate in interpreting codified statutes, because a change in statutory language resulting from a codification does not ordinarily alter the meaning of the statute even where a literal construction of the new language could result in a substantive change. See *United States* v. *Cook*, 384 U.S. 257; *City of Greenwood* v. *Peacock*, 384 U.S. 808; *Fourco Glass Co.* v. *Transmirra Corp.*, 353 U.S. 222; 1A J. Sutherland, *Statutes and Statutory Construction*, § 28.10 (4th ed.).[10] In this case, as in *Cook*, *Greenwood*, and

[10] The two decisions of this Court chiefly relied upon by petitioners and the *amicus* do not support petitioners' position. While both *Continental Casualty Co.* v. *United States*, 314 U.S. 527, and *United States* v. *Bowen*, 100 U.S. 508, involved construction of revised statutes which had altered the language of prior acts, in neither case was this Court's decision based solely on the statutory changes. In *Continental Casualty* this Court held that the result reached was compelled by the purpose of the legislation and in *Bowen*, which involved a statute governing the assignment of military pensions to the

Fourco Glass, the legislative history of the codification shows that no substantive change was intended (See pp. 18-19, *infra*). To refuse to consider the legislative history in these circumstances would contravene the guiding principle of statutory interpretation: that statutes are to be construed in the way that best effectuates the purpose of the legislature in enacting them. See, *e.g.*, *Harrison* v. *Northern Trust Co.*, 317 U.S. 476, 479.

Soldiers Home by residents of the Home, this Court reviewed the history of the establishment of the Soldiers Home in reaching its decision.

To the extent that the opinions in *Continental Casualty* and *Bowen* contain language which suggests that a court cannot resort to aids in construction of codified statutes, such language is contrary to this Court's recent decisions and can no longer be deemed controlling. See, *e.g.*, *City of Greenwood* v. *Peacock*, *supra*; *Fourco Glass Co.* v. *Transmirra Corp.*, *supra*.

CONCLUSION

For the foregoing reasons, the judgment of the court of appeals should be affirmed.

Respectfully submitted.

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APRIL 1974.

APPENDIX

The Department of Defense Pay and Allowances Entitlements Manual, Part 4, Chapter 4, Section B provides:

§ 40411:

> Reserve members who have completed at least five years of continuous active duty immediately before involuntary separation are entitled to readjustment pay if they are not qualified for retirement. This also applies to members of the Army or Air Force without specification of component (temporary). Conditions of entitlement are in Table 4-4-6 and Table 4-4-7.

§ 40414:

> To compute years' active service to determine amount of readjustment pay due, follow these rules:
>
> a. Fractions of Year. Count six months or more as a whole year, and disregard any part less than six months.
>
> b. Period for Which Separation Pay Received. Do not count any prior service for which any type of severance pay, separation payment, or release from duty payment has been made.

Army Regulation 37-125, ¶ 1-40, provides:

> Entitlement to readjustment pay will be determined in accordance with the provisions of Part Four, Chapter 4, Section B, DODPM [DOD Pay Manual].

Air Force Manual 177-105, ¶ 3-13(a) provides:

> When notice is received that a member is to be separated involuntarily, determine entitlement under DODPM, part four, chap 4, sec B. If he is entitled, immediately counsel member about his option to elect to receive or to waive his entitlement to readjustment pay. In either case have him complete and sign AF Form 1481, "Certification of Election to Accept or Waive Readjustment Payment," in original and two copies. Reproduce this form locally (fig 3-7). Verify all information on the form from:
>
> (1) Information furnished by the Department of the Air Force directing the involuntary separation.
>
> (2) Prior separation documents obtained from the member.
>
> (3) Financial data file.

Secretary of the Navy Instruction 1900.7C, ¶ 3 provides:

> Reference (a) [10 U.S.C. 687] authorizes readjustment payments for certain Reserve personnel who are "involuntarily released from active duty" and who meet other prescribed criteria (ref. (b) [DOD Pay Manual, Pt. 4, Ch. 4, Sec. B]).

Marine Corps Order 1900.1H, ¶ 7 provides:

> Reserve officers who serve on continuous active duty for a minimum of 5 years are entitled to lump-sum readjustment payments upon involuntary release from active duty as outlined in paragraphs 40411-40417 of reference (f) [DOD Pay Manual].

Coast Guard Comptroller's Manual provides:

¶ 2B01157(A):

Under the provisions of 10 USC 687, a member of the Coast Guard reserve who is involuntarily released from active duty on or after 29 June 1962 is entitled to a lump sum readjustment payment, provided he has completed *at least five years* of continuous active duty immediately prior to such release.

¶ 2B01157(E):

Compute the number of years of active service in determining the multiplier as follows:

Count a part of a year that is six months or more as a whole year. Disregard a part of a year that is less than six months.

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